IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

OP.No. 21071 of 2001(H)

PETITIONER:

K.THANGAVELU, AGED 45, S/O. S. KRISHNAN,
MANAGER - PROJECTS (UNDER ORDERS OF DISMISSAL FROM SERVICE),
KOCHI REFINERIES LIMITED, AMBALAMUGAL-682 302,
ERNAKULAM DISTRICT, RESIDING AT "SARAVANAPPIKAI", G-5,
GANDHI NAGAR, THEKKUMBAGAM, TRIPUNITHURA-682 301,
ERNAKULAM DISTRICT.

BY ADVS. SRI.O.V.RADHAKRISHNAN(SR.)
SRI.M.A.THOMAS KUTTY

RESPONDENTS:

1.KOCHI REFINERIES LIMITED, AMBALAMUGAL - 682 302,
ERNAKULAM DISTRICT, REPRESENTED BY ITS CHAIRMAN &
MANAGING DIRECTOR.

2.GENERAL MANAGER -M PROJECTS, KOCHI REFINERIES LIMITED,
OFFICE OF THE REGISTERED OFFICE AT AMBALAMUGAL,
PIN 682 302, ERNAKULAM DISTRICT.

3.DIRECTOR - REFINERIES, KOCHI REFINERIES LIMITED,
OFFICE OF THE REGISTERED OFFICE AT AMBALAMUGAL,
PIN 682 302, ERNAKULAM DISTRICT.

4.THOMAS PHILIP (INQUIRY OFFICER), CHERUKARA PHILSTEAD,
M.IX/386, CHEMPAKASSERY ROAD, ALUVA 683 101.

BY ADVS.P.K.KURAIAN (SR.) R1 TO R3
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 21/06/2006, THE COURT ON 08/02/2007 DELIVERED THE
FOLLOWING:

ORDER IN C.M.P. NO.34271 OF 2001 IN O.P. NO.21071 OF 2001.

DISMISSED

8.2.2007 Sd/-(K.THANKAPPAN, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the order dated 17.09.1999 of the 2nd respondent.

Ext.P2: True copy of the charge sheet cum show cause notice dated 23.09.1999 of the 2nd respondent.

Ext.P3: True copy of the reply to Memo of charges sheet dated 01.10.1999 of the petitioner to the 2nd respondent.

Ext.P4: True copy of the Notice of Inquiry dated 08.10.1999 to the 2nd respondent.

Ext.P5: True copy of the judgment in O.P.No.26054/99 dated 01.11.1999 of this Hon'ble Court.

Ext.P6: True copy of the letter dated 26.10.1999 of the Presenting Officer to the 4th respondent.

Ext.P7: True copy of the petition dated 02.11.1999 of the petitioner submitted to the 4th respondent.

Ext.P8: True copy of the letter dated 19.11.1999 of the 4th respondent.

Ext.P9: True copy of the judgment dated 24.11.1999 in O.P.No. 29286/99 of this Hon'ble Court.

Ext.P10: True copy of the judgment dated 02.02.2000 in W.A.No. 2766 of 1999 of this Hon'ble Court.

Ext.P11: True copy of the petition dated 17.02.2000 to the 2nd respondent.

Ext.P12: True copy of the letter dated 18.02.2000 of the petitioner to the 4th respondent.

Ext.P13: True copy of the petition dated 18.02.2000 of the petitioner to the 4th respondent.

Ext.P14: True copy of the statement dated 22.10.1999 recorded from Mohanan Contractor.

Ext.P15: True copy of the Objection Petition dated 18.02.2000 of the petitioner to the 4th respondent.

Ext.P16: True copy of the petition dated 25.02.2000 of the petitioner to the 4th respondent.

Ext.P17: True copy of the Bias Petition dated 01.03.2000 submitted by the petitioner to the 1st respondent.

Ext.P18: True copy of the Bias Petition dated 05.09.2000 of the petitioner to the 2nd respondent.

Ext.P19: True copy of the request dated 17.03.2000 of the petitioner before the 4th respondent.

Ext.P20: True copy of the letter dated 28.03.2000 of the 2nd respondent.

Ext.P21: True copy of the petition dated 31.03.2000 submitted by the petitioner before the 4th respondent.

Ext.P22: True copy of the letter dated 26.05.2000 of the 2nd respondent.

Ext.P23: True copy of the petition dated 13.06.2000 of the petitioner to the 4th respondent.

Ext.P24: True copy of the letter dated 23.06. of the 2nd respondent.

Ext.P25: True copy of the Medical Certificate dated 28.09.2000 of Dr. N. Surendran, Civil Surgeon , Government General Hospital, Ernakulam.

Ext.P26: True copy of the petition dated 12.10.2000 of the petitioner to the 2nd respondent.

Ext.P27: True copy of the petition dated 31.10.2000 of the petitioner before the 4th respondent.

Ext.P28: True copy of the petition dated 16.11.2000 of the petitioner to the 4th respondent.

Ext.P29: True copy of the Entrustment Mahazar dated 15.09.1999 of N. Surendran, Inspector ;of CBI, Kochi.

Ext.P29(a): True copy of the Recovery Mahazar dated 15.09.1999 of N.Surendran, Inspector of CBI, Kochi.

Ext.P30: True copy of the written brief dated 07.12.00.

Ext.P31: True copy of the Inquiry Report dated 18.12.2000 of the 4th respondent forwarding letter dated 21.12.2000 of the 2nd respondent to the 4th respondent.

Ext.P32: True copy of the representation dated 25.12.2000 of the petitioner to the 2nd respondent.

Ext.P33: True copy of the show cause notice dated 17.01.2001 of the 2nd respondent.

Ext.P34: True copy of the written explanation dated 09.02.2001 of the petitioner to the 2nd respondent.

Ext.P35: True copy of the Punishment Order dated 14.02.2001 issued by the 2nd respondent.

Ext.P36: True copy of the Appeal dated 20.02.2001 of the petitioner to the 3rd respondent.

Ext.P37: True copy of the Appellate Order dated 09.03.2001 of the third respondent.

Ext.P38: True copy of the Charge Sheet dated 28.12.1999 issued by Special Judge CBI Court -II, Ernakulam.

Ext.P39: True copy of the judgment in Crl.A.474/2000 dated 6.1.2003 of this Hon'ble Court.

Ext.P40: True copy of the representation dated 15.1.2003 of the petitioner to the 3rd respondent.

Ext.P41 True copy of the order dated 7.2.2003 of the 3rd respondent.

Ext.P42: True copy of the representation dated 21.2.03 of the petitioner to the 1st respondent.

Ext.P43: True copy of the order No.121/30.19/1520 dated 18.3.2003 of the 1st respondent.

RESPONDENTS' EXHIBITS:

Ext.R1(a): True copy of the representation dated 22.03.2000 submitted by the petitioner to the Disciplinary Authority.

Ext.R1(b): True copy of the representation letter dated 03.06.2000 of Dr. Mathew Abraham.

K.THANKAPPAN, J.

O.P. NO. 21071 OF 2001

Dated this the 8th day of February, 2007

JUDGMENT

The petitioner has approached this Court aggrieved by Exts.P1, P2, P31, P35, P37, P41 and P43 orders and he seeks to quash the said orders.

2. The petitioner, while working as Manager (Projects) under the first respondent - Kochi Refineries Limited, Ambalamugal was placed under suspension as per Ext.P1 order dated 17.9.1999 issued by the second respondent and thereafter he was served with Ext.P2 charge sheet and show cause notice dated 23.9.1999. In Ext.P2 it was stated that the petitioner was assigned the implementation of projects which include Engineering, Procurement, Construction, Supervision, Measurement and Billing of (1) Coordination of Civil part of Tank Farm Management Centre (2) MCC room for Propylene/MTO, (3) Civil Work of Propylene sphere, development etc. and (4) Building in Sphere area. It was further stated in Ext.P2 that as part of item No.2, on the basis of the recommendation of the petitioner a service order dated 14.3.1999 was issued to an engineering contractor one K. Mohanan, Malayilkarottu

House, FACT Colony, Puthencruz, for the removal of concrete column, concrete blocks, boulders from MCC area (Propylene shpere) and for providing 200 mm. thickness soiling on the approach road to MCC for a notional contract value of Rs.19,490/-. Pursuant to the above service order, the following misconducts were reported against the petitioner:

i. "When the contractor Shri K. Mohanan approached you for submitting his bills dated 01.09.1999 in connection with the above work, you had advised him to meet you after collecting the payments for his bills from the Company.

ii. When the contractor Shri K. Mohanan met you on 15th September, 1999 at about 08.30 hrs., you demanded a sum of Rs.10,000/- (Rupees ten thousand only) from him as bribe or reward for awarding the contract to him and also assured him that if this amount was paid, he would be shown the favour of awarding Company contracts in future also.

iii. On the same day i.e. 15th September, 1999 at about 12.00 hrs. when the contractor came to your office room with the amount of Rs.10,000/- demanded by you, you advised him to proceed to the Company car parking area near the Company main gate and give this amount to you over there.

iv. You then came to the car parking area and entered in your car (reg.No.KL7 K 727) and received the amount of Rs.10,000/- offered by Shri K. Mohanan and immediately thereafter you drove your car and left the Company

premises.

v. The CBI officers then followed your car to your residence and recovered the bribe amount of Rs.10,000/- from you which was kept inside your car."

It was also alleged that the officers of the Central Bureau of Investigation (for short "C.B.I.") placed the petitioner under arrest for the commission of offence punishable under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the P.C. Act") and as such the action of the petitioner amounted to failure to maintain absolute integrity and devotion to duty and unbecoming of an employee of the company and the petitioner also violated clauses 6.1.1, 6.1.2 and 6.1.3 of the Cochin Refineries Limited Conduct, Discipline and Appeal Rules (hereinafter referred to as "the C.R.L. Rules"). It was also stated in Ext.P2 that if the above allegations were true, the petitioner would be guilty of misconduct under clauses 27.3, 27.11 and 27.25 of the C.R.L. Rules. The petitioner was directed to show cause why disciplinary action should not be taken against him for the above misconducts alleged against him.

3. The petitioner submitted Ext.P3 representation before the second

respondent denying the allegations levelled against him. Subsequently, Ext.P4 notice dated 8.10.1999 was served on the petitioner informing him that the explanation offered by him was found to be unsatisfactory and hence a domestic enquiry was proposed to be conducted and that the 4th respondent was appointed as the Enquiry Officer. On receipt of Ext.P4 notice, the petitioner approached this Court by filing O.P.No.26054 of 1999 seeking to drop the departmental enquiry on the ground that a criminal enquiry is going on against him on the same set of allegations. This Court disposed of the Original Petition as per Ext.P5 judgment directing the petitioner to approach the Enquiry Officer by filing appropriate petition for staying the disciplinary proceedings. Subsequent to the filing of the above Original Petition, the Presenting Officer filed a list of documents and witnesses proposed to be relied on and examined in the domestic enquiry. As per the direction of this Court, the petitioner approached the 4th respondent by filing Ext.P7 petition, but the 4th respondent disposed of the same as per Ext.P8 stating that the Management has witnesses and documents other than those proposed to be examined and relied on by the C.B.I. in the criminal case and that the nature of the domestic enquiry and the criminal case were not based on identical facts and evidence. On receipt of Ext.P8, the petitioner again approached this Court by filing O.P.No.29286 of 1999 and this Court as

per Ext.P9 judgment dated 24.11.1999 dismissed the Original Petition holding that the nature of the criminal charge and the charge in the domestic enquiry were not identical. Aggrieved by Ext.P9 judgment, the petitioner filed W.A.No.2766 of 1999 which was disposed of by this Court as per Ext.P10 judgment directing that the domestic enquiry proceedings initiated against the petitioner shall continue, but no final orders will be passed till the closure of the proceedings initiated in C.C.No.15 of 1999 by the Special Court CBI II, Ernakulam.

4. After the disposal of the Writ Appeal, the petitioner approached the second respondent seeking the assistance of a Legal Practitioner in the domestic enquriy, but his request was rejected. Thereafter, the Enquiry Officer proceeded with the enquiry on the basis of the statement of K.Mohanan alleged to have been recorded by the Chief Vigilance Officer of the first respondent - Company and the said statement was marked on the side of the Management. Though the petitioner filed an objection against marking of the statement, the objection was rejected by the 4th respondent. The petitioner then requested the Enquiry Officer to give him copies of ten documents kept by the Management for the purpose of enquiry and effective cross-examination but the Enquiry Officer directed the petitioner to approach the second respondent. Accordingly, the

petitioner filed a petition before the second respondent who as per letter dated 28.3.2000 informed the petitioner that the documents sought for by him were in the custody of the C.B.I. and that the petitioner may approach the officials of the C.B.I. for getting copies of the documents. Thereupon, the petitioner filed Ext.P21 petition dated 31.3.2000 before the 4th respondent stating that non-production of the documents caused prejudice to him in setting up his defence.

5. However, the enquiry continued. While so, the petitioner met with an accident on 19.4.2000 and he was admitted in the Intensive Care Unit of Indira Gandhi Co-operative Hospital, Kadavanthra, Ernakulam in an unconscious condition and was discharged after 9 days advising complete bed rest for a period of 45 days. As the enquiry was posted to 17.5.2000, the 4th respondent was informed of the accident by telegram and letter and request was made to postpone the enquiry up to the middle of June, 2000. But, as per letter dated 26.5.2000, the second respondent directed the petitioner to appear for a medical examination on 2.6.2000 for ascertaining his fitness. The petitioner appeared before the Neuro Physician of Indira Gandhi Co-operative Hospital who advised him to take complete bed rest for one more month. The petitioner then sought adjournment of the enquiry up to the middle of July,2000 as per Ext.P23

letter. On receipt of the said letter, the second respondent as per Ext.P24 letter directed the petitioner to appear for another medical examination. It was also stated in Ext.P24 letter that the petitioner was not cooperating with the 4th respondent to conduct the enquiry and the subsistence allowance paid to him at the rate of ¾ of his basic pay and D.A. was limited to ¼ of his last drawn basic pay and D.A. Thereafter, the petitioner produced a medical certificate and the criminal case against him was adjourned. While so, the petitioner fell ill due to spondylitis cervical spine on 27.9.2000 and he sent a telegram to the 4th respondent expressing his inability to attend the enquiry on 28.9.2000 and also produced a medical certificate issued by the Civil Surgeon, General Hospital, Ernakulam. Thereafter, as per telegram dated 5.10.2000, the petitioner was directed to appear before Dr. Khaleel, Orthopaedic Surgeon, Medical Trust Hospital, Ernakulam on 7.10.2000 to undergo a physical fitness test. On receipt of the above telegram, the petitioner sent Ext.P26 letter to the second respondent pointing out that he is being harassed by asking him to appear before a private doctor even though he was being attended by a Civil Surgeon. On 12.10.2000, the 4th respondent informed the petitioner that during the period of his illness, the domestic enquiry was held ex parte on 9.10.2000 and 23.10.2000 and the enquiry was adjourned to 31.10.2000 and asked the petitioner to cross-examine one P.K.Shibu who

was examined in chief as Management Witness No.4. Thereupon, the petitioner submitted Ext.P27 petition requesting to make available five defence documents to enable him to effectively cross-examine the above witness who was a trap witness. But the documents were not furnished to him on the ground that those documents were in the custody of the Central Excise Department where the said witness was working.

6. After examining Management Witness No.4, the prosecution evidence was closed and the petitioner submitted a list of defence witnesses and a list of defence documents on 16.11.2000. The petitioner examined three defence witnesses from the list. Finally, the enquiry proceedings were closed on 24.11.2000 and the Presenting Officer and the petitioner were requested to make their written briefs within 14 days. The Presenting Officer did not file any written brief. Ext.P30 dated 7.12.2000 is the written brief filed by the petitioner. Thereafter, the 4th respondent submitted Ext.P31 enquiry report to the second respondent, a copy of which was made available to the petitioner. The Enquiry Officer found that all the charges levelled against the petitioner were proved and the petitioner was found guilty of the charges framed against him. The petitioner was served with Ext.P33 show cause notice to show cause why a punishment of dismissal from service should not be imposed on him. The

petitioner submitted Ext.P34 explanation. However, the petitioner was served with Ext.35 proceedings dated 14.2.2001 dismissing him from the service of the first respondent with immediate effect. On receipt of Ext.P35, the petitioner filed Ext.P36 appeal before the third respondent, but the same was dismissed as per Ext.P37 order dated 9.3.2001.

7. During the pendency of the disciplinary proceedings and the appeal filed by the petitioner against Ext.P35 dismissal order, the trial of the criminal case charged against the petitioner under Sections 7 and 13 of the P.C. Act continued and the trial court as per judgment dated 4.7.2000 found the petitioner guilty under Sections 7 and 13(2) of the P.C. Act and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5000/- under Section 7 of the P.C. Act. The petitioner was also sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5000/- under Section 13(2) of the P.C. Act and in default of payment of fine, to undergo simple imprisonment for a period of three months each. It was also ordered that the substantive sentence of imprisonment shall run concurrently. Against the judgment in C.C.No.15 of 1999, the petitioner filed Crl. Appeal No.474 of 2000 and as per Ext.P39 judgment dated 6.1.2003, this Court set aside the conviction and sentence ordered against the petitioner and

acquitted him on giving him the benefit of doubt. The petitioner then filed Ext.P40 representation before the third respondent seeking to review the dismissal order in the light of Ext.P39 judgment. As per Ext.P41 order, the third respondent rejected the request of the petitioner stating that the acquittal was on giving the benefit of doubt as the prosecution had not succeeded in proving the guilt of the accused beyond reasonable doubt and hence Ext.P39 judgment will not help the petitioner to claim reinstatement in service. Aggrieved by Ext.P41, the petitioner filed Ext.P42 Review Petition before the first respondent under Rule 31.4 of the C.R.L. Rules, but the same was dismissed as per Ext.P43 order stating that the petition was not maintainable.

8. This Court heard the learned Senior counsel appearing for the petitioner and the learned Senior counsel appearing for respondents 1 to 3.

9. Various contentions were raised by the learned counsel appearing for the petitioner. According to the learned counsel, Ext.P2 charge memo is based on the same set of allegations and evidence which were the basis for the charge sheet filed in C.C.No.15 of 1999 on the file of the Special Judge II, C.B.I., Ernakulam and hence the charge memo itself is manifestly illegal and arbitrary. To substantiate this argument,

learned counsel relied on the decision of the Apex Court reported in **M. Paul Anthony v. Bharat Gold Mines Ltd. (1999)3 S.C.C. 679.** Cousel further submitted that Ext.P35 order dismissing the petitioner from service is arbitrary and discriminatory and violative of articles 14 and 16 of the Constitution of India as it is based only on Ext.P31 enquiry report which was drawn without following the procedures prescribed under the provisions of the C.R.L. Rules and also in violation of the principles of natural justice. Learned counsel further contended that Ext.P37 appellate order and Ext.P43 revisional order were passed without considering the grounds urged by the petitioner in the Appeal Memorandum and the Review Petition and also without considering the judgment of this Court in Crl. Appeal No.474 of 2000. In support of this contention, learned counsel relied on the decisions of the Apex Court reported in **Union of India v. Jayaram, A.I.R. 1960 Madras 325** and **State of Assam v. Mohan Chandra, A.I.R.1972 S.C. 2535** and the judgment of the Gujarat High Court reported in **Ramsinhji Viraji v. State of Gujarat, 1971 S.L.R. 743.** It was further contended by the learned counsel for the petitioner that the enquiry report is vitiated on the ground that the petitioner was not given the permission to get the assistance of a Legal Practitioner to assist him in the domestic enquiry. To substantiate this contention, counsel placed reliance on the judgments reported in

S.L.Kapoor v. Jagmohan, A.I.R. 1981 S.C.136, Union of India v. Karunakaran Nair, 1985 K.L.T. 680 and **Dhup Singh v. State of Haryana, 1969 S.L.R. 436.** Yet another contention raised by the learned counsel for the petitioner was that the authorities ought to have taken into account the fact that as per Ext.P39 judgment, the petitioner was exonerated of all charges.

10. Learned counsel appearing for the respondents, relying on the counter affidavit filed for and on behalf of respondents 1 to 3, submitted that Ext.P2 charge memo and show cause notice were issued under clauses 27.3, 27.11 and 27.25 of the C.R.L. Rules and that the proceedings initiated against the petitioner and the C.B.I. case charged against the petitioner are on different facts and evidence. Learned counsel further submitted that Ext.P5 judgment itself makes it clear that there was no illegality or infirmity in proceeding with the disciplinary enquiry initiated against the petitioner during the pendency of the criminal case. Counsel further submitted that the charge memo revealed that the petitioner committed the misconduct alleged against him and evidence was also adduced by the management. Further, counsel submitted that the enquiry was not an ex parte enquiry as alleged by the petitioner, but the petitioner was not willing to appear for the enquiry. Learned counsel also pointed

out that the petitioner had not informed of his inability to appear for the enquiry. With regard to the contention that the petitioner was not given permission to get the assistance of a Legal Practitioner, learned counsel for the respondents submitted that such refusal is within the power of the management. Counsel also submits that Ext.P35 dismissal order was passed after complying with all the formalities and considering the findings entered by the Enquiry Officer and hence there was no infirmity in issuing Exts.P35, P37, P41 and P43 orders.

11. This Court had made it clear in Ext.P5 judgment that there was no infirmity in proceeding with the disciplinary proceedings initiated against the petitioner inspite of the pendency of the criminal case. In the said judgment, this Court had directed the petitioner to move the Enquiry Officer for stay of the disciplinary proceedings. However, the Enquiry Officer found that there was no illegality or infirmity in proceeding with the disciplinary proceedings as the witnesses to be examined and the evidence to be analysed in the disciplinary proceedings were different from that of the case charge sheeted against the petitioner by the C.B.I. Though the petitioner had stated in Ext.P7 representation that the materials produced and the witnesses cited, both in the criminal case and the enquiry are one and the same, the petitioner could not prove that fact or that it

caused any prejudice to him. The only case stated in Ext.P7 was that three witnesses cited by the Management should not be examined prior to the criminal case. Hence, the contention of the petitioner that the evidence and materials adduced in the disciplinary proceedings and the evidence adduced in the criminal case are one and the same is not correct.

12. The contention of the learned counsel for the petitioner that Ext.35 dismissal order is arbitrary and violative of Articles 14 and 16 of the Constitution of India as it was based only on Ext.P31 enquiry report cannot be accepted. A show cause notice was issued to the petitioner proposing a punishment of dismissal from service. Further, the petitioner had not cross-examined the Management Witness No.4. The petitioner had not informed the Enquiry Officer in writing that he wanted to summon any of the defence witnesses or for production of any documents and hence the contention of the petitioner that prejudice was caused to him is not sustainable. The Enquiry Officer had not violated any of the provisions of the C.R.L. Rules which would vitiate the enquiry proceedings. The Disciplinary Authority had considered the entire matter before accepting Ext.P31 enquiry report.

13. The contention of the learned counsel for the petitioner that the

appellate authority had not considered any of the grounds urged in the appeal memorandum is also not sustainable. The appellate authority had taken into consideration the explanation given by the petitioner to the show cause notice and had found that none of the grounds urged by the petitioner were tenable in the light of the finding entered by the Enquiry Officer. The further contention of the counsel that the appellate authority as well as the revisional authority had not considered Ext.P39 judgment by which the conviction and sentence ordered against the petitioner were set aside is also not correct. Both the authorities had considered Ext.P39 judgment and found that the petitioner was acquitted by giving him the benefit of doubt, that the allegations against the petitioner in the criminal case still exist and that the finding of the Enquiry Officer was on the basis of the evidence adduced in the enquiry proceedings.

14. With regard to the contention that the petitioner was not given permission to get the assistance of a Legal Practitioner to assist him in the domestic enquiry, it is seen that as per the C.R.L. Rules, the petitioner is entitled to get the assistance of a fellow employee, but not a Legal Practitioner, especially when the Presenting Officer of the Company himself was not a Legal Practitioner. Hence, rejection of the above request is well within the power of the management.

15. Coming to the contention that the judgment of the trial court was set aside by the appellate court by Ext.P39 judgment and the petitioner was exonerated from all the charges levelled against him, it is seen that the petitioner was acquitted of the charges only on the ground that the prosecution had not succeeded in proving the guilt of the appellant beyond reasonable doubt. The above finding of the appellate court would show that the petitioner was not acquitted of all the charges, but he was acquitted on giving the benefit of doubt . The acquittal made on giving benefit of doubt cannot be taken as a clear or honourable acquittal.

Considering the entire facts and circumstances of the case, this Court is of the view that the Original Petition is without merit and it is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

O.P.NO.21071 OF 2001

JUDGMENT

8TH FEBRUARY, 2007